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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 10 1998

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116

To: The Commission

**REPLY COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these reply comments in response to the comments filed in the above-captioned proceeding. These reply comments support the majority of commenters who favor forbearance from the enforcement of wireless number portability ("WNP") implementation until such time as WNP can be feasibly integrated into a solidly competitive wireless telecommunications market.

DISCUSSION

I. There Is Decisive Factual Support for CTIA's Contention that Enforcing WNP Implementation Will Halt the Steadily Progressive Growth of Competition in the Wireless Telecommunications Market in Direct Contravention of the Objective of the WNP Requirement, Thereby Mandating Forbearance

The majority of commenting commercial mobile radio services ("CMRS") new market entrants attest that diverting monies to implement WNP will stymie their carefully planned courses of system build-out and competitively-priced service provision.¹ Airtouch speculates

¹ See Comments of Airtouch Communications, Inc. ("Airtouch") at 2; Comments of Bell Atlantic Mobile, Inc. ("BAM") at 3, 19; Comments of GTE Service Corporation ("GTE") at 4; Comments of The Personal Communications Industry Association ("PCIA") at 4; Comments of PrimeCo Personal Communications, L.P. ("PrimeCo") at 2, 10; Comments of Southwestern Bell Mobile Systems, Inc., and Pacific Bell Mobile Services (collectively, "SBMS") at 7-8; Comments of Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint") at 3; Comments of Upstate Cellular Network ("UCN") at 2-4; Comments of U.S. Cellular Corporation ("USCC") at 2.

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that its implementation of WNP could cost between \$55 and \$75 million over the next five years, which Airtouch characterizes as “a significant detour of scarce dollars.”² Sprint estimates that the cost to a personal communications service (“PCS”) provider like itself to deliver calls to a ported number could run to the tens of millions of dollars per year and could reach over \$100 million by the year 2001, based on the three-tenths of a cent per call rate proposed by the Regional Bell Operating Companies’ (“RBOCs”) Query Service Tariff.³ UCN states that it will be forced to allocate between \$2-\$3 million to implement a system-wide platform necessary to meet the June 30, 1999, WNP deadline.⁴ These sample cost projections may vary considerably depending on the actual provider and its size. However, while a small rural cellular company’s WNP implementation costs may be less than that of a large PCS carrier, the burden is relative to each entity’s budget, and comparably impacts each carrier’s ability to carry out its system development plans. Airtouch comprehensively describes the problems inherent in enforcing deployment of WNP, stating:

CMRS carriers simply cannot be expected to invest in new and better basic network coverage, deploy digital network overlays, develop innovative technologies and applications, implement price reductions, and consider entry into the local exchange marketplace to the fullest degree possible where the Commission’s regulations impose the costs of [WNP].⁵

² Airtouch Comments at 2.

³ Sprint Comments at 1-2.

⁴ UCN Comments at 2.

⁵ Airtouch Comments at 3.

BAM echoes RTG's stated concern with the impact of the planned enforced deployment of WNP on small rural carriers⁶:

competition could . . . be hindered as carriers with smaller services areas (and the concomitant need to rely on roaming) are forced to incur the cost of implementing portability. As CTIA notes, for number portability to work, it must be implemented by carriers in all markets, and thus by small carriers with limited resources or serving sparsely populated areas. The adverse impact on smaller CMRS carriers' ability to expand service, because of the need to finance number portability, is another public interest basis for granting forbearance.⁷

The Commission, without the direction of Congress, initiated and adopted WNP requirements on the premise that the public interest would benefit from what the Commission, and some nascent PCS market entrants, thought WNP would foster — chiefly, increased competition in the CMRS marketplace, particularly for new service providers, lower barriers to entry, and the promotion of wireless-wireline competition.⁸ Now the passage of time bears witness to the fact that the opposite is true. As BAM notes, the growth of competition in the two years since the Commission adopted CMRS number portability requirements illustrates that there is no nexus between wireless portability and CMRS entry, and "PCS carriers and other new entrants are entering new geographic markets and building market share-all without number portability."⁹

⁶ Comments of RTG at 4.

⁷ BAM Comments at 19.

⁸ *In re Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8431-38 (1997); Comments of PCS PrimeCo, L.P., CC Docket No. 95-116 (filed Sep. 12, 1995) at 3-4; Reply Comments of PCS PrimeCo, L.P., CC Docket No. 95-116 (filed Oct. 12, 1995) at 1-2.

⁹ BAM Comments at 9-10.

Indeed, the Cellular Telecommunications Industry Association ("CTIA") filed its petition for forbearance at the urging of its PCS members,¹⁰ who exhort forbearance so that investment can remain focused on system deployment and service quality--the keys to entry and survival in the CMRS market, and the cornerstones of competition. PrimeCo, "based on its *actual* wireless experience," states that it has changed its position regarding the public interest benefits of WNP, and urges the Commission to forbear from its enforcement.¹¹ Nearly every commenter in this proceeding has agreed that enforcing WNP will hurt competition, while forbearing from enforcement will promote competition.¹² These same commenters each independently found that this truth is the basis on which CTIA's petition satisfies the three-prong test for forbearance under Section 10 of the Communications Act of 1934, as amended.¹³

Nextel Communications, Inc. ("Nextel"), which characterizes itself as a new entrant CMRS provider, is the lone commenting CMRS party to "support [WNP] implementation as a tool to further enhance the growing competition in the CMRS industry, and asserts that it can be achieved concurrently with aggressive system buildout."¹⁴ Nextel insists that "[i]f competing in the CMRS marketplace requires both [WNP] implementation and system buildout, competitive carriers will ensure that both are achieved and that customers are provided state-of-the-art

¹⁰ CTIA Petition for Forbearance of Telephone Number Portability (filed Dec. 16, 1997) at 4.

¹¹ PrimeCo Comments at 2.

¹² See note 1, *supra*.

¹³ *Id.*; 47 U.S.C. § 10.

¹⁴ Comments of Nextel at 2.

communications tools.”¹⁵ It is not surprising that Nextel should claim the financial ability to both continue its system deployment and WNP implementation--its infrastructure has been in development for quite some time, and may be generating revenue in some areas. Moreover, while RTG does not dispute that Nextel invested exorbitant sums of money in the recent 800 MHz SMR auction, Nextel, unique among CMRS providers, obtained much of the spectrum for its wide-area enhanced Specialized Mobile Radio Services (“ESMR”) network at low cost (either through \$45 FCC application fees for 800 MHz spectrum or through assignment) long before licenses had to be gotten at auction. PCS providers, in contrast, gained entry into the CMRS marketplace solely through auction, and paid dearly for the opportunity. They have only just begun to construct, and must budget both their license payments and costs of deploying networks in fine detail. This is especially true for rural carriers, at least those that were able to gather enough capital to win or partition a PCS license, and now must carefully balance their ability to finance system expansion and new construction with their longstanding commitment to serving their current subscribers. Accordingly, Nextel should not be seen as representative of the majority of new CMRS market entrants, as most of them arrived on the CMRS scene via very recent auctions and find themselves with little, if any, discretionary money. The majority of CMRS providers must divert money from network buildout and marketing and enhancing service quality to WNP implementation if the Commission does not forbear from enforcement of the requirement.

If WNP is mandated, competition will suffer as money is diverted, new CMRS system construction and expansion is delayed or halted, and prices rise to recoup the cost of WNP

¹⁵ *Id.* at 4.

implementation. The Commission needs to let the marketplace fill with providers so that number portability has meaning. If WNP is required now, only a select few CMRS providers will survive, and the impetus for WNP — facilitating the switching of carriers to allow consumers to gain the best prices and services — will have little merit. Airtouch describes this phenomenon thus:

Requiring CMRS carriers to deploy [WNP] in order to promote CMRS-LEC competition not only counts the chickens while the eggs are not yet hatched but likely harms the development of eggs that are still incubating.¹⁶

RTG equates enforcement of WNP as putting the cart before the horse. Regardless of the metaphor used to characterize it, enforcing WNP implementation will hurt competition in the CMRS market, and that is not what WNP was intended to accomplish.

II. NO COMMENTS SHOW THAT FORBEARANCE FROM ENFORCING WNP FAILS TO SATISFY SECTION 10's THREE-PRONG TEST

The majority of commenters addressing the issue find that forbearance from enforcing WNP is mandated by the requirements of Section 10 of the Communications Act of 1934, as amended.¹⁷ MCI Telecommunications Corporation ("MCI") is the only commenter to apply the Section 10 three-prong test and find that forbearance is not warranted. MCI's arguments, however, lack credibility on several fronts.¹⁸

¹⁶ Airtouch Comments at 6.

¹⁷ 47 U.S.C. § 160; Airtouch Comments at 7-9; BAM Comments at 8-18; GTE Comments at 5-8; PrimeCo Comments at 5-8; RTG Comments at 5-7; SBMS Comments at 2-11; UCN Comments at 2-4; USCC Comments at 4-5.

¹⁸ As an initial matter, MCI's participation in this proceeding must be questioned from the standpoint of relevance. Nowhere in its comments does MCI state its interest in the matter of WNP or indicate why it is qualified to participate in the proceeding. It is a well-accepted

MCI argues that CTIA's petition for forbearance is a late-filed petition for reconsideration, and therefore should be summarily denied.¹⁹ RTG finds this contention to be wholly without merit, insofar as every petition for forbearance filed with the Commission is seeking the "reconsideration" of the enforcement of some rule, regulation or policy that is already in effect. To follow MCI's line of reasoning, every petition for forbearance filed more than 30 days after public notice of the Commission's action in question would be untimely, and therefore subject to denial. Section 10 of the Act provides, in pertinent part, that:

[a]ny telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers.²⁰

Section 10 sets no statutory deadline for the filing of a request for forbearance. MCI's argument that CTIA's petition should be denied as an untimely-filed petition for reconsideration indicates at best ignorance, at worst a blatant disregard, for one of the basic provisions of Section 10.

convention to open comments with a statement explaining why the party is interested and/or qualified to have its views factored into the pool of data and information from which rules and regulations ultimately will be crafted. MCI offers no justification for its participation in this proceeding, but simply characterizes its filing as an "opposition" to CTIA's Petition for Forbearance. Without stating why CTIA's petition is objectionable to MCI, MCI's opposition lacks credibility.

¹⁹ Comments of MCI at 2-4.

²⁰ 47 U.S.C. § 160(c).

MCI, alone, contends that CTIA's petition fails to meet the requirements for forbearance set forth in Section 10 of the Act. MCI argues that CTIA's petition fails the first prong of the forbearance test²¹ because:

[a]bsent the legal requirement that they do so, CMRS providers would not provide number portability on their own, and if they did, it could not be safely presumed that they would do so in a just and reasonable fashion.²²

This is a brazen, speculative statement, which MCI makes without support. It is ludicrous to say that CMRS providers will never provide WNP, unless forced to under the law. As UCN pointed out:

[t]here is no doubt that number portability will be provided to subscribers, the issue is the timing of the provision. Given the robust competition between carriers, if number portability becomes a consumer demand, the demand will be met prior to a deadline imposed by the Commission.²³

For CMRS carriers to withhold WNP in the face of consumer demand would be suicidal. More importantly, MCI's speculative assertions fall far short of demonstrating that WNP is "necessary" to ensure just, reasonable and nondiscriminatory rates. As BAM points out, there are numerous provisions within the Act designed to prevent unjust and unreasonable rates and punish those who engage in them.²⁴ MCI does not even suggest, much less demonstrate, that such provisions

²¹ The first prong of the forbearance test considers whether enforcement of a rule is "necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory." 47 U.S.C. § 160(a)(1).

²² MCI Comments at 6.

²³ UCN Comments at 3 (footnote omitted).

²⁴ BAM Comments at 5. ("In prior decisions granting forbearance as to other CMRS obligations, the Commission relied on Sections 201, 202 and 208 as the basis for finding that the first two forbearance tests had been met.").

are inadequate.

MCI argues that CTIA's petition has not met the second prong of the forbearance test, which requires forbearance from regulation when enforcement is not necessary for the protection of consumer, because absent required WNP, "consumers will be deprived of the ability to change service providers without changing their telephone numbers."²⁵ As the record in this proceeding shows, CMRS customers are not clamoring for number portability, nor has the absence of it prevented customers from switching carriers; churn among competing CMRS carriers is high and steady.²⁶ Thus, a "legal requirement" to provide number portability is unwarranted where there is neither a consumer nor a marketplace demand for the capability.

Finally, MCI argues that the third prong of the test, which requires forbearance to serve the public interest, is not met because:

incumbent carriers cannot be expected to provide number portability without a regulatory requirement that they do so. Therefore, in this instance, competition is no substitute for regulation, making forbearance from number portability for CMRS carriers decidedly contrary to the public interest.²⁷

RTG, and every supporting commenter to CTIA's petition, has argued that forbearance of WNP serves the public interest by permitting CMRS new market entrants or expanding incumbents to focus their capital where it is needed most to serve the objectives of competition--on network buildout, marketing, service quality and maintenance of low prices for the

²⁵ MCI Comments at 6.

²⁶ See, e.g., Airtouch Comments at 6-7; BAM Comments at 13-15; GTE Comments at 7; PrimeCo Comments at 9.

²⁷ MCI Comments at 8 (emphasis added).

consumer.²⁸ MCI has failed to rebut such arguments. The overwhelming majority of commenters agree that CTIA's petition satisfies the Section 10 forbearance test. Because temporary forbearance from enforcement of WNP is in the public interest, and because WNP is not *necessary* to ensure just and reasonable rates and the protection of consumers, the FCC should forbear from enforcement of WNP pursuant to the authority granted it under Section 10.

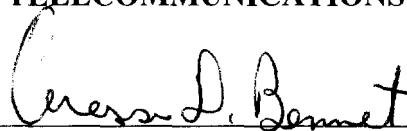
CONCLUSION

For the foregoing reasons, RTG respectfully requests that the Commission grant CTIA's petition and forbear from enforcing WNP, at least until the PCS five-year buildout period has ended.

Respectfully submitted,

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²⁸ See note 1, *supra*.